THE HONBLE SRI JUSTICE GODA RAGHURAM

W.P.No.21051 of 2006

Date 14.06.2006

Between:
Padmachary.

..... PETITIONER

AND

The Commissioner Municipal Corporation of Hyderabad & others.

.....RESPONDENTS

THE HONBLE SRI JUSTICE GODA RAGHURAM

W.P.No.21051 of 2006

ORAL ORDER:

The writ petition is filed, in substance seeking a direction to respondents 1 and 2 to remove the encroachments into the petitioner's land in an extent of 4.92 sq. yards in Sy.No.132 admeasuring 218.5 sq. yards in plot bearing No.9-1-128/A/9, Prashant Nagar, Langer Houz, Hyderabad, in pursuance of the decree in O.S.No.5347 of 2001 dated 19-02-2002 on the file of the VII Junior Civil Judge, City Civil Court, Hyderabad.

According to the petitioner, there were encroachments into his property by respondents 3 and 4, who are also making illegal constructions in the encroached area. It appears that one Lawrence who is also interested in the encroached property and was making constructions thereon filed O.S.No.356 of 1995 which is stated to have been dismissed on 19-06-1998. The petitioner then approached the official respondents seeking demolition of the illegal constructions. Apprehending demolition, Lawrence filed another suit O.S.No.5347 of 2001 on the file of the Junior Civil Judge, City Civil Court, Hyderabad whereat in I.A.No.1170 of 2001, by an order dated 21-09-2001, Lawrence obtained injunction. Eventually, the I.A was dismissed on 19-02-2002 recording a finding that Lawrence is an encroacher.

Against the aforesaid order, Lawrence preferred CMA.No.67 of 2002, which is also stated to have been dismissed by the Court of Additional Chief Judge, City Civil Court, Hyderabad on 26-08-2003. In view of the above orders of the Courts of competent civil

jurisdiction, the petitioner sought action by the official respondents to demolish the unauthorized constructions in the encroached property.

In the counter affidavit filed, the second respondent states in detail that action has been taken and unauthorized constructions have been demolished after scrutiny of the title of the petitioner to the property and that the property belongs to him.

Petitioner appearing in person, however, disputes this claim of the respondents and states that part demolition has taken place and that the other property of the petitioner which is under encroachment is under illegal construction. In the light of the categorical assertion in the counter affidavit, there are contestable factual positions emerging. This is to be resolved by the competent Court of Civil jurisdiction and not under Article 226 of the Constitution of India.

On the above analysis, reserving liberty to the petitioner to pursue alternate remedies including before the civil Court of competent jurisdiction, the writ petition is dismissed. No order as to costs.

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14-06-2007

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